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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,540	11/14/2003	Kelly D. Jones	DEC 7802	7968
2147	7590	08/30/2004	EXAMINER	
GRACE J FISHEL 11970 BORMAN DRIVE SUITE 220 ST. LOUIS, MO 63146			COTTINGHAM, JOHN R	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/713,540	<b>Applicant(s)</b> JONES, KELLY D.	
	<b>Examiner</b> John R. Cottingham	<b>Art Unit</b> 3679	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-15 is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/1/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 7 recites the limitation " the chemical preserving means " in line 5. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

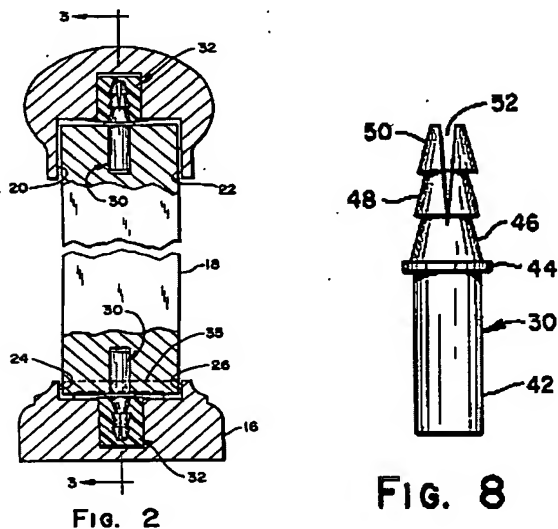
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Basey U.S. Patent 4,403,767. Basey shows all of the claimed subject matter of a connector in Figures 1-12.

Regarding claim 1, a connector 50 for use in isolating painted tubular metal balusters from rails formed of wood treated with a wood preservative that is corrosive to the tubular metal balusters or from a wood preservative that is corrosive to the paint, said connector 50 formed of a chemically inert material and comprising a body and a disk 32, said body having an upper frustum 42 with a base 44 and a lower frustum 48 with a base 42, said upper and lower frustums 42 and 48 joined at their bases 44 and 46, said body adapted to conform and wedge into an end of a tubular metal baluster;

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and, said disk 32 adapted for placement under the lower frustum and against an end of the tubular metal baluster when the body is wedged into the end of tubular metal baluster, said upper frustum 42 having a central cavity 56 for receipt of a fastener for joining the body and the disk to a wooden rail, said disk acting as a corrosion barrier between the baluster and the wood rail.



Regarding claim 2, wherein a central ridge (the outer rim of 44) is formed about the body where the frustums are joined, said body adapted to wedge into an end of a tubular metal baluster on at least the central ridge.

Regarding claim 3, wherein one or more additional ridges 50 are formed on the upper and lower frustum spaced from the central ridge.

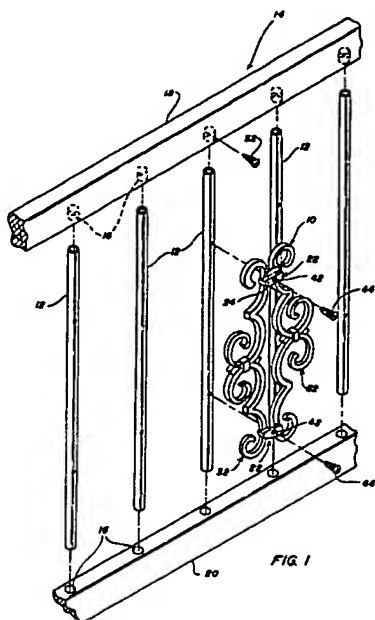
Regarding claim 4, wherein the chemically inert material is a chemically inert polymer selected from the group consisting of polyethylenes, polypropylenes, polyamides, polyvinyl, polyesters and polyesters including mixtures and copolymers thereof. (col. 2, lines 56-60)

Regarding claim 5, wherein the disk 32 is circular for use when the rail is horizontal.

Regarding claim 6, wherein the disk is oval for use when the rail is inclined. If viewed on an angle, disk 32 forms an oval.

2. Claims 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones et al. U.S. Patent 6,394,422.

Regarding claim 7, a railing system having a top rail 18 and a bottom rail 20, the top rail and the bottom rail 18 and 20 being spaced apart and formed of wood, the wood treated with a wood preservative (col. 1, lines 20-25, and it is inherent that most woods today are treated with a preservative), the railing system having painted hollow metal balusters 10 extending between the top and bottom rails, the railing system having means 12 and 52 for protecting the hollow metal baluster from the corrosive effects of the chemical preserving means, the protecting means being placed between the ends of the hollow metal balusters and the top and bottom rails. The function of protecting the metal baluster from corrosive effects is a process, and this is a product by process claim, where only the product is given patentable weight.



Regarding claim 8, wherein the protecting means has means 52 for joining the protecting means to the top and bottom rails.

Regarding claim 9, wherein the protecting means 12 is formed from a chemically inert polymer selected from the group consisting of polyethylenes, polypropylenes, polyamides, polyvinyls, polyesters and polyethers including mixtures and copolymers thereof. (col. 2, lines 40-45).

### ***Allowable Subject Matter***

3. Claims 10-15 are allowed.
4. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record neither teaches nor suggests all of the claimed subject matter of claim 10 including the combination of the railing system with the polymer connector having an upper (having a central cavity for a fastener) and lower frustum and a disk.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zenhausern U.S. Patent 3,740,083, Rapata U.S. Patent 3,319,918, Worden U.S. Patent 3,065,342, Wakai et al. U.S. Patent 6,602,034, and Smith U.S. Patent 5,60,454 show similar inventions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (703) 306-3439. The examiner can normally be reached on Monday - Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
John R. Cottingham

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Primary Examiner  
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jrc